

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**CRIMINAL MINUTES – JURY TRIAL
Day 7**

Case No.: 4:18CR00011

Date: 10/15/2019

Defendant:

4:18-cr-00011-MFU-RSB-1 Marcus Jay Davis
4:18-cr-00011-MFU-RSB-2 Kevin Lamont Trent, Jr.
4:18-cr-00011-MFU-RSB-3 Kanas Lamont'e Trent
4:18-cr-00011-MFU-RSB-4 Deshaun Lamar Trent
4:18-cr-00011-MFU-RSB-5 Phillip Daekwon Miles
4:18-cr-00011-MFU-RSB-6 Shabba Larun Chandler
4:18-cr-00011-MFU-RSB-8 Ashley Tiana Ross
(bond)
4:18-cr-00011-MFU-RSB-10 Tenikqua Fuller (bond)

Counsel:

Tony Anderson, Bev Davis
Aaron Cook, Jimmy Turk
Bonnie Lepold, Mike Hemenway
Chris Kowalczyk, Patrick Kenney
Tyson Daniel, Cary Bowen
Aaron Houchens, Jeff Dorsey
Terry Grimes

Corey Diviney

PRESENT:	JUDGE:	Michael F. Urbanski, CUSDJ
	TIME IN COURT:	9:23-9:34, 9:45-10:31, 10:56-3:11, 3:34-4:34 6h 12m
	Deputy Clerk:	Kristin Ayersman
	Court Reporter:	Judy Webb
	U. S. Attorney:	Heather Carlton, Ron Huber, Michael Newman
	USPO:	Kim Falatic
	Case Agent:	Devin Taylor, FBI TFO Pittsylvania County
	Interpreter:	none

LIST OF WITNESSES

GOVERNMENT	DEFENDANT
1.	1.

PROCEEDINGS:

2 jurors struck for cause/hardship.
14 struck jurors struck by Government.
8 jurors struck by Defense.
18 (12 jurors + 6 alternates) jurors remain after strikes.

- ☒ Preliminary remarks and instructions to jury by Court.
- ☐ United States of America or Defendant makes oral Motion to Exclude Witnesses from Courtroom. Court grants motion.
- ☐ Opening Statements by counsel.
- ☐ Government presents evidence.
- ☐ Government rests.
- ☐ Defendant makes Motion for Judgment of Acquittal.
Court ☐ grants ☐ denies ☐ takes under advisement.
- ☐ Defendant presents evidence.
- ☐ Defendant rests.
- ☐ Defendant renews Motion for Judgment of Acquittal.
Court ☐ grants ☐ denies ☐ takes under advisement.
- ☐ Rebuttal evidence.
- ☐ Surrebuttal evidence.
- ☐ Closing Arguments.
- ☐ Jury Instructions given to Jury.
- ☐ Objections to Jury Instructions by U.S.A and/or Defendant.
Court ☐ overrules ☐ grants.
- ☐ Jury retires to deliberate at Time retired.
- ☐ Jury returns at Time returned.
- ☐ Jury Verdict: Verdict?

<input type="checkbox"/> Jury polled.	<input type="checkbox"/> Polling waived.
<input type="checkbox"/> Mistrial declared.	<input type="checkbox"/> Jury discharged.
- ☐ Motions after verdict:
- ☐ Sentencing set for _____.
- ☐ Sentencing to be set by Clerk.
- ☐ Court orders Presentence Report.
- ☐ Defendant remanded to custody.
- ☐ Defendant to remain on bond.

Additional Information:

US addresses issue of victim wanting to be present for opening, will testify later on – statutorily allowed. Jury enters courtroom 9:50. Dft 4 has issue with US first strike – Dft 4 makes Batson Challenge re #39. US responds, reasons stated on record. Dft 1 joins motion, reasons stated on record. Dft 3 joins, reasons stated on record. Dft 2 joins, for reasons stated on record. Dft 5 joins, reasons stated on record. Court notes issue is sufficient race neutral articulation for reason for strike. Dft 6 joins, reasons stated on record, reserves right to raise issue after jury selection. US responds, as stated on record. Court asks court reporter for rough draft of voir dire of juror in question. Recess 10:31 Reconvene 10:56 Court addresses parties re Batson Challenge as stated on record, gives case cites to counsel. Court overrules Batson Challenge, subject to balance of the strikes going forward. Jury returns 11:07, strikes continue. Jury removed. Defense motion, #19 Batson Challenge for reasons stated. US responds. Court overrules. US Batson Challenge, all 8 defense strikes (18, 25, 27, 33, 44, 35, 20, 40), reasons stated on record. Dft 4 responds, in order. US responds – pre-textual, as stated. Court overrules – strikes will be evaluated. Court will send jury to lunch, return at 1:30pm. Defense Batson Challenge #8. US responds, as stated on record. Defense responds – pre-textual. Court directs court reporter to email voir dire rough draft of that juror. US clarifies. Court overrules objection at this time. Jury selection continues. Defense Batson Challenge for #45. US responds. Court finds US has articulated race-neutral explanation, asks court reporter to provide voir dire. Court notes on #8 that US didn't question this juror at all during voir dire. As to #39 – court notes US stated reasons, no mention of forgiveness in court reporter rough. Parties continue selecting panel. Dft 4 makes Batson Challenge #10. US

responds. Court asks court reporter to provide rough draft of voir dire for #10. Court has comments for parties, asks parties to complete selection of alternates. Dft 4 renews motions on Batson Challenges previously raised, noting #8. Dft 4 moves/asks that all challenged strikes be reinstated. Dft 2 comments, joins motion. Court asks Dft 2 what remedy he seeks. Dft states proper remedy would be to release this jury and set this trial over to January with the other case. Dft 1, Dft 5 and Dft 6 respond as stated. Dft 6 agrees that this jury needs to be dismissed and case to start over. Dft 6 notes #8 and #39, but cannot put them back on jury at this point. Dft 8 responds – joins motions. Dft 10 joins, same remedy. Dft 3 joins, same remedy. Dft 5 joins, suggest putting jurors back. Dft 4 joined and suggesting putting jurors back but also open to set new trial. US responds. Court questions US re #8 – US explains as stated. US addresses #39 briefly. US states struck less than 50% African Americans between strikes/alternates. 8 of 40 jurors today were African American, 20%, and jury that would be seated today would have 25% African Americans – US believes fair jury can be seated. Recess 3:11 Reconvene 3:34 Court addresses parties re Batson Challenges as stated on record. The court overrules in their entirety the Batson Challenges in this case, as stated on the record, and will seat this jury. Dfts objections are noted. Jury returns 3:50. Jury seated. Jury released for day 4:10, to return for start of trial at 9:30am.

Dft 3 asks the court to not allow US to use trial exhibits during opening statements. Dft 10 filed objections at 587 – not responded to by court. Dft 6 addresses govt witnesses, and how parties are to exchange those names. Dft 4 has his juror information on a hard drive – court directs to delete that information, but counsel may keep/preserve their notes that they may need for appeal purposes. Dft 1 had some information on hard drive also, will dispatch similarly. Any counsel in same position should delete. Dft 8 will file a motion for judicial notice of certain events that happened in this courtroom last week. Dft 5 joins Dft 3 motion re opening statement exhibits. Court asks US to address. US does intend to use power point that has trial exhibits. Dft 3 responds, concerned with cross. Court will proceed with opening statements and if objs raised, court will deal with. US will not provide power point to defense. Dft 4 would prefer transcripts and US response re Ferguson hearing. US expects less than one hr, court would like all openings done in a.m., with evidence to start in afternoon. Court directs US to give witness list. Recess 4:22 Counsel back on record 4:24. Adjourn 4:34